IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9434 of 1997
with
SPECIAL CIVIL APPLICATION NO. 9435 OF 1997
with
SPECIAL CIVIL APPLICATION NO. 767 OF 1998
with
SPECIAL CIVIL APPLICATIOIN NO. 768 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN
and
MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

VIRAL LAMINATES PVT LTD
Versus
UNION OF INDIA

Appearance:
MR PARESH M DAVE for Petitioners
MR JD AJMERA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.G.BALAKRISHNAN and
MR.JUSTICE J.M.PANCHAL
Date of decision: 28/04/98

ORAL JUDGEMENT

(Per : Panchal, J.)

In these petitions, which are filed under Article 226 of the Constitution, the common question that falls for consideration of the Court is whether Rule 20 of Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 ("the Rules" for short) in so far as it enables the Appellate Tribunal to dismiss an appeal for default of appearance, is ultravires the provisions of Section 35-C(1) of the Central Excise and Salt Act,1944 ("The Excise Act" for short) and Section 129-B(1) of the Customs Act,1962 ("the Customs Act" for short). Under the circumstances, all these petitions are disposed of by this common judgment.

2. In order to understand the controversy between the parties, we propose to refer to the facts of Special Civil Application no. 9434/97, as facts of other petitions are almost same. Petitioner no.1 is a Private Limited Company and inter-alia engaged in the business of manufacture of paper based decorative laminated sheets. Petitioner no.2 is a director and shareholder of petitioner no.1-Company. The Commissioner of Central Excise, Ahmedabad i.e. respondent no.3 by an order in original dated February 2, 1987 confirmed certain duty liability and imposed penalty. The petitioners, therefore, filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi ("CEGAT" for short) with an application praying to stay the order passed by respondent no.3. The CEGAT by an interim order stayed the order passed by respondent no.3 on certain terms and conditions. The hearing of the appeal was fixed before CEGAT on July 26, 1996. The appellants had forwarded written submissions to be considered while hearing the appeal on merits. It is the case of the petitioners that written submissions so forwarded by the petitioners were not put in the concerned file by the registry of the Tribunal. When the appeal was called out for final hearing on July 26, 1996, the petitioners were not present. The CEGAT, therefore, dismissed the appeal for default of appearance of the petitioners. The petitioners thereafter filed an application for restoration of appeal. In support of the averments made in the restoration application, the petitioners had submitted written arguments, but the restoration application was dismissed by CEGAT vide order dated January 27, 1997. The order dismissing appeal for default as well as the order passed on restoration application are collectively produced by the petitioners at Annexure-A to the petition. It is an admitted

position that in other petitions also appeals filed by the respective petitioners before the CEGAT were dismissed for default and restoration applications have been dismissed. Therefore, we do not think it necessary to state facts of those petitions in detail.

3. The petitioners have mentioned in the petition that Rule 20 of the Rules, which enables the Appellate Tribunal to dismiss the appeal for default of appearance, is unconstitutional and ultravires the provisions of Section 35C(1) of the Excise Act, as well as Section 129-B(1) of the Customs Act, inasmuch as the Appellate Tribunal is required to dispose of the appeal on merits and has no power to dismiss the appeal for default. It is claimed in the petitions that the provisions contained in Section 35-C(1) of the Excise Act, as well as Section 129-B(1) of the Customs Act, to the effect that "the Appellate Tribunal may pass such orders thereon" means that the Appellate Tribunal must pass the order on merits of the appeal as well as on the issue in controversy and, therefore, that part of Rule-20 which enables the Appellate Tribunal to dismiss the appeal for default of appearance of the party, is ultravires those provisions. It is asserted in the petitions that the part of Rule-20 which enables the Appellate Tribunal to dismiss an appeal for default of appearance is also inconsistent with other provisions of the Excise Act as well as Customs Act under which right to apply for making reference to the High Court as well as power of the High Court to direct the Tribunal to state a case and refer a question of law for determination by the High Court, are affected. What is highlighted in the petitions is that the part of Rule 20 which enables the Appellate Tribunal to dismiss an appeal for default of appearance is not only unreasonable, but also contrary to law pronounced by the Supreme Court in the case of Commissioner of Income-Tax, Madras Vs. S. Chenniappa Mudaliar, 1969 I.T.R.(Vol.74) 41 = A.I.R. 1969 S.C. 1068. Under the circumstances, by filing these petitions under Article 226 of the Constitution, the petitioners have prayed to issue a writ of mandamus or any other appropriate writ, direction or order to strike down Rule 20 of Customs, Excise & Gold (Control) Appellate Tribunal (Procedure) Rule, 1982. The petitioners have also prayed to issue a writ of mandamus or any other appropriate writ or order directing CEGAT to make a rule providing that appeal shall be decided on merits even if appellant does not remain present on the date on which appeal is fixed for hearing before CEGAT. The petitioners have further prayed to issue a writ, order or direction permanently prohibiting the CEGAT from dismissing any appeal for non-appearance of the

appellant. The respective petitioners have also prayed to quash and set aside the orders passed by CEGAT dismissing their appeals for default as well as orders rejecting applications for restoration of appeals on file

4. Though the respondents are duly served, no affidavit-in-reply has been filed by any of the respondents in any petition controverting the statements made in the petitions.

5. In order to decide the question posed for consideration of the Court in the present petitions, it would be relevant to refer to certain provisions of the Central Excise & Salt Act, 1944 as well as Customs Act, 1962. Section 129 of the Customs Act provides that the Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and Gold (Control) Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by the said Act. So far as Central Excise & Salt Act, 1944 is concerned, Section 2(aa) defines "Appellate Tribunal" to mean the Customs, Excise and Gold (Control) Appellate Tribunal constituted under section 129 of the Customs Act, 1962. Section 35B of the Excise Act provides that any person aggrieved by any of the orders enumerated in sub-section (1) thereof, may appeal to the Appellate Tribunal. Under sub-section (5) of Section 35B, the Appellate Tribunal has power to admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section(3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period. Section 35C deals with method and manner in which appeal filed before the Appellate Tribunal has to be disposed of. For our purpose, section 35C(1) is relevant which reads as under :-

> "35C(1) : The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary."

6. Section 129A of the Customs Act provides that any

person aggrieved by any of the orders mentioned in sub-section (1) thereof, may appeal to the Appellate Tribunal. Under sub-section (5) of Section 129 of the Customs Act the Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period. The manner and method of disposing of appeal filed before the Appellate Tribunal is provided in section 129B of the Customs Act and section 129B(1) which is relevant for our purpose reads as under :-

"129B(1) : The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming,modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary."

7. The powers, functions and duties of the Appellate Tribunal are set out in sections 129A, 129B & 129C of the Customs Act as well as sections 35B, 35C & 35D of the Excise Act. Sub-section (1) of Section 35B as well as sub-section (1) of Section 129A of the Customs Act give a right to the assessee and the Commissioner to appeal to the Appellate Tribunal against the order passed by the Commissioner of Central Excise or Commissioner (Appeals) or against the order of Collector of Customs as the case may be. Sub-section (1) of section 129B of the Customs Act as well as sub-section (1) of section 35C of the Excise Act are to the effect that the Appellate Tribunal may after giving both the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit and shall communicate any such order to the assessee and to the Commissioner. Sub-section (4) of section 35C of the Excise Act and sub-section (4) of section 129 of the Customs Act make the orders of the Appellate Tribunal on appeal final, the only saving being with reference to the provisions of section 35G or section 35L of the Excise Act and section 130 & section 130E of the Customs Act. Under section 35G of the Excise Act as well as under section 130 of the Customs Act the assessee or Commissioner can require the Appellate Tribunal to refer to the High Court any question of law arising out of the order of Appellate Tribunal and if the Tribunal refuses to state the case on the ground that no

question of law arises, the assessee or the Commissioner can, within the prescribed period, apply to the High Court and the High Court can direct the Appellate Tribunal to state the case and make a reference. It is unnecessary to refer to other provisions of Section 35G of the Excise Act or Section 130 of the Customs Act. In exercise of the powers conferred by sub-section (6) of Section 129C of the Customs Act, 1962 read with sub-section (1) of Section 35D of the Central Excise and Salt Act, 1944 and sub-section (1) of Section 81B of the Gold (Control) Act, 1968, the Appellate Tribunal has made rules known as the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982. Now, Rule-20 cannot be said ultravires sub-section (6) of Section 129C of the Customs Act or sub-section (1) of Section 35D of the Excise Act, which empower the Appellate Tribunal to regulate its own procedure and the procedure of the Benches thereof, but what has to be essentially seen is whether it is repugnant to the provisions of section 35C(1) of the Excise Act and section 129B(1) of the Customs Act. The scheme of provisions of the two Acts relating to the Appellate Tribunal apparently is that it has to dispose of an appeal by making such orders as it thinks fit on merits. It follows from the language of section 35C(1) of the Excise Act and section 129B(1) of the Customs Act and in particular the use of the word "thereon" that the Tribunal has to go into the correctness or otherwise of the points decided by the departmental authorities in the light of the submissions made by the appellant. This can only be done by giving a decision on the merits on questions of fact and law and not by merely disposing of the appeal on the ground that the party concerned has failed to appear. As observed in Hukumchand Mills Ltd. v. Commissioner of Income-tax, (1967) 63 I.T.R. 232 (S.C.), the word "thereon" restricts the jurisdiction of the Tribunal to the subject matter of the appeal. Therefore, the words "pass such orders as the Tribunal thinks fit" will include all the powers which are conferred on Commissioner of Central Excise or Commissioner (Appeals) under the provisions of the Excise Act or Collector of Customs under the provisions of the Customs Act. The provisions about making a reference on questions of law to the High Court will be rendered nugatory if any such power is attributed to the Appellate Tribunal by which it can dismiss an appeal, which has otherwise been properly filed, for default, without making any order thereon in accordance with section 35C(1) of the Excise Act or section 129B(1) of the Customs Act. The position becomes quite simple when it is remembered that the assessee or the Commissioner, if aggrieved by the orders of the Appellate

Tribunal, can have resort only to the provisions relating to reference to be made to the High Court. So far as the questions of fact are concerned, the decision of the Tribunal is final and reference can be sought to the High Court only on questions of law. The High Court exercises purely advisory jurisdiction and has no appellate or revisional powers. The advisory jurisdiction can be exercised on a proper reference being made and that cannot be done unless the Tribunal itself has passed proper order under section 35C(1) of the Excise Act or section 129B(1) of the Customs Act, on merits. It follows from all this that the Appellate Tribunal is bound to give a proper decision on questions of fact as well as law which can only be done if the appeal is disposed of on merits and not dismissed owing to the absence of the appellant.

8. At this stage, it would be instructive to refer to decision of the Apex Court in the case of COMMISSIONER OF INCOMES-TAX, MADRAS (Supra). In the said case, the Supreme Court considered question whether rule-24 of the Appellate Tribunal Rules, 1946, in so far as it enabled the Tribunal to dismiss an appeal for default of appearance was ultra vires the provisions of section 33 of the Income-tax Act, 1922. Therein the assessee had 1674 shares in Asher Textiles Ltd. and 9 out of 20 shares in Textile Corporation (Private) Ltd. at Tiruppur. The latter company was the managing agent of the Asher Textiles Ltd. The assessee was a joint managing director of the Textile Corporation (Private) Ltd. along with one P.D.Asher. The assessee had sold his entire holdings in two companies to Asher and some of his relations. Those sales had resulted in a profit of Rs. 72,515 and Rs.3,14,100 respectively. The Income-tax Officer had assessed these amounts to tax for the assessment year 1956-57 under section 10(5A) of the Act as compensation earned for parting with the effective power of management. The assessment was upheld by the Appellate Assistant Commissioner. The assessee had thereupon appealed to the Appellate Tribunal. After some adjournments, the appeal was finally fixed for hearing on August 26, 1958. On that date, no one was present on behalf of the assessee nor was there any application for an adjournment. On August 28, 1958, the appeal was dismissed by the Tribunal for default of appearance. After disposal of the appeal, the assessee had filed a petition before Appellate Tribunal praying for its restoration. However, that application was dismissed. The assessee thereupon had applied for a reference under section 66(1) of the Act on two questions of law, but that application was also rejected by the Tribunal. The

assessee, therefore, approached the High Court under section 66(2) of the Act. The High Court directed the Tribunal to state the case on two questions. The special bench constituted to hear the reference, reframed the question as under :-

"Whether rule 24 of the Appellate Tribunal Rules, 1946, in so far as it enables the Tribunal to dismiss an appeal for default of appearance, is ultra vires ?"

The special bench, after examining the provisions of the Act, came to the conclusion that rule-24 of the Appellate Tribunal Rules, in so far as it enabled the Tribunal to dismiss an appeal for default of appearance, was ultra vires. Thereupon the matter was carried to the Supreme Court. The Supreme Court on interpretation of the word "thereon" appearing in section 33(4) of the Income-Tax Act, 1922 as well as provisions of section 66 relating to reference to the High Court has held that the Appellate Tribunal has no power to dismiss an appeal for non-appearance of appellant and the appeal must be decided on merits. The pertinent observations made by the Supreme Court, while concluding that Rule-24 in so far as it enabled the Appellate Tribunal to dismiss an appeal for non-appearance of appellant is ultra vires section 33(4) of the Income-Tax Act, 1922, are as under :-

"Now rule 24 cannot be said to be ultra vires sub-section (8) of section 5A but what has to be essentially seen is whether it is repugnant to the provisions of section 33(4). The reasoning which prevailed with the 'Special Bench' of the High Court, in the present case, was that under section 33(4) the Tribunal is bound to dispose of the appeal on the merits, no manner whether the appellant is absent or not. Reference in particular was made to the remedies,namely, the provisions contained in section 66 relating to reference on questions of law and the further right of appeal to this Court under section 66A if the case is certified to be fit one for appeal.The Special Bench found it difficult to accept that by exercising the power to dismiss an appeal for default of appearance under rule 24, these remedies which were open to an aggrieved party could be defeated or rendered infructuous.The fact that there was no provision in rule 24 or any other rule for restoring an appeal once it was dismissed for default was also

considered weighty in the matter. The cases in which the validity of rule 24 has been upheld may now be considered. In Shri Bhagwan Radha Krishan v. Commissioner of Income-tax, the discussion on the question of validity of the rule is somewhat meagre. It was no doubt said that rule 24 did not in any way come into conflict with section 33(4) but hardly any reasons were given in respect of that view. It was recognised that there was no specific rule empowering the Tribunal to restore an appeal dismissed for default of appearance, but it was observed that the Tribunal would have inherent jurisdiction to set aside such an order if satisfied with regard to the existence of a sufficient cause. According to Ravula Subba Rao v. Commissioner of Income-tax, a very wide power was given to the Appellate Tribunal by section 33(4) and it could pass any order which the circumstances of the case required. It was immaterial whether the opportunity of being heard had been availed of by the party or not. This provision, it was held, did not make it obligatory for the Appellate Tribunal to dispose of the appeal on merits. In this case again there was hardly much discussion and the Allahabad decision was simply followed. In Mangat Ram Kuthiala v. Commissioner of Income-tax, the points raised were different and arose in a petition filed under articles 226 and 227 of the Constitution. It does not appear that the validity of rule 24 was canvassed.

The scheme of the provisions of the Act relating to the Appellate Tribunal apparently is that it has to dispose of an appeal by making such orders as it thinks fit on the merits. It follows from the language of section 33(4) and in particular the use of the word "thereon" that the Tribunal has to go into the correctness or otherwise of the points decided by the departmental authorities in the light of the submissions made by the appellant. This can only be done by giving a decision on the merits on questions of fact and law and not by merely disposing of the appeal on the ground that the party concerned has failed to appear. As observed in Hukumchand Mills Ltd. v. Commissioner of Income-tax,the word "thereon" in section 33(4) restricts the jurisdiction of the Tribunal to the subject matter of the appeal and the words "pass such orders as the Tribunal

thinks fit" include all the powers (except possibly the power of enhancement) which are conferred upon the Appellate Assistant Commissioner by section 31 of the Act. The provisions contained in section 66 about making a reference on questions of law to the High Court will be rendered nugatory if any such power is attributed to the Appellate Tribunal by which it can dismiss an appeal, which has otherwise been properly filed, for default, without making any order thereon in accordance with section 33(4). The position becomes quite simple when it is remembered that the assessee or the Commissioner of Income-tax, if aggrieved by the orders of the Appellate Tribunal, can have resort only to the provisions of section 66. So far as the questions of fact are concerned, the decision of the Tribunal is final and reference can be sought to the High Court only on questions of law. The High Court exercises purely advisory jurisdiction and has no appellate or revisional powers. The advisory jurisdiction can be exercised on a proper reference being made and that cannot be done unless the Tribunal itself has passed proper order under section 33(4). It follows from all this that the Appellate Tribunal is bound to give a proper decision on questions of fact as well as law which can only be done if the appeal is disposed of on the merits and not dismissed owing to the absence of the appellant. It was laid down as far back as the year 1953 by S.R.Das J. (as he then was) in Commissioner of Income-tax v. Arunachalam Chettiar that the jurisdiction of the Tribunal and of the High Court is conditional on there being an order by the Appellate Tribunal which may be said to be done under section 33(4) and a question of law arising out of such an order. The Special Bench, in the present case, while examining this aspect, quite oppositely referred to the observations of Venkatarama Aiyar J.in Commissioner of Income-tax v. Scindia Steam Navigation Co.Ltd. indicating the necessity of the disposal of the appeal on the merits by the Appellate Tribunal. This is how the learned Judge had put the matter in the form of interrogation:

"How can it be said that the Tribunal should seek for advice on a question which it was not called upon to consider and in respect of which it had no opportunity of deciding whether

the decision of the Court should be sought ?"

Thus, looking at the substantive provisions of the Act there is no escape from the conclusion that under section 33(4) of the Appellate Tribunal has to dispose of the appeal on the merits and cannot short-circuit the same by dismissing it for default of appearance.

Now, although rule 24 provides for dismissal of an appeal for the failure of appellant to appear, the rules at the material time did not contain any provision for restoration of the appeal. Owing to this difficulty some of the High Courts had tried to find an inherent power in the Tribunal to set aside the order of dismissal (vide Shri Bhagwan Radha Kishan v. Commissioner of Income-tax and Mangat Ram Kuthiala v. Commissioner of Income-tax). There is a conflict of opinion among the High Courts whether there is any inherent power to restore an appeal dismissed for default under the Civil Procedure Code (Mulla, Civil Procedure Code, Volume II, page 1583, 1584). It is unnecessary to resolve that conflict in the present case. It is true that the Tribunal's powers in dealing with appeals are of the widest amplitude and have in some cases, been held similar to, and identical with, the powers of an appellate court under the Civil Procedure Code. Assuming that for the aforesaid reasons the Appellate Tribunal is competent to set aside an order dismissing an appeal for default in exercise of its inherent power there are serious difficulties in upholding the validity of rule 24. It clearly comes into conflict with sub-section (4) of section 33 and in the event of repugnancy between the substantive provisions of the Act and a rule it is the rule which must give way to the provisions of the Act. We would accordingly affirm the decision of the Special Bench of the High Court and hold that the answer to the question which was referred was rightly given in the affirmative."

9. From the above quoted decision of the Supreme Court, it is evident that the manner and method in which an appeal filed before the Appellate Tribunal under the provisions of the Income-Tax Act, 1922 is required to be

disposed of are same as envisaged under section 35C(1) of the Excise Act as well as section 129B(1) of the Customs Act. Therefore, the decision rendered by the Supreme Court in the case of COMMISSIONER OF INCOME-TAX, MADRAS (Supra) would be applicable with all force in so far as manner in which an appeal filed under the provisions of section 35C(1) of the Excise Act and section 129B(1) of the Customs Act is required to be disposed of. Under the circumstances, the part of rule 20 of the Rules will have to be struck down. In Bam Singh v. State of U.P. AIR 1996 S.C. 2439, in a criminal case, it was held that Court is not bound to adjourn the case if appellant or his lawyer is not present and case may be disposed of on merits, but appeal cannot be dismissed for want of prosecution. The use of the expression "thereon" means that the Appellate Tribunal has to pass order on the subject matter of the appeal and on the issue in controversy. The expression "thereon" does not mean that the Appellate Tribunal can pass an order of dismissal for default of appearance, since such an order has nothing to do with the matter in controversy. Having regard to the scheme of the Excise Act as well as the Customs Act, there is no manner of doubt that the appeal filed before the Appellate Tribunal has got to be disposed of on merits and not for default of appearance of the appellant. Thus, the Appellate Tribunal has to decide the issue 'ex-parte', but dismissing appeal for non-appearance does not seem to be legally or even on equity grounds, correct when the Supreme Court in J.K.Synthetics Ltd. v. C.C.E., 1996 (86) E.L.T. 472 has held that an appeal decided ex-parte can be recalled and heard afresh if appellant shows sufficient cause for his absence. Therefore, that part of Rule-20 which enables the Appellate Tribunal to dismiss an appeal for default of appearance will have to be struck down.

10. The submission that Rule 20 of the Rules empowers the Appellate Tribunal to restore an appeal which has been dismissed for default on sufficient ground being made out and, therefore, that part of the Rule 20 which enables the Appellate Tribunal to dismiss the appeal for default of appearance should not be declared ultra vires, has no substance. It is true that the Tribunal's powers in dealing with appeals are of the widest amplitude and the Appellate Tribunal is competent to set aside an order dismissing an appeal for default if sufficient cause is made out by the appellant. However, in case of COMMISSIONER OF INCOME-TAX, MADRAS (Supra) similar contention has been negatived by the Apex Court which is quite evident from the last para of the reported decision. The power to dismiss an appeal for

non-appearance of the appellant clearly comes into conflict with sub-section(1) of section 35C of the Excise Act as well as section 129B(1) of the Customs Act and in the event of repugnancy between the substantive provisions of the Act and the Rules, it is the rule which must give way to the provisions of the Act.

11. For the foregoing reasons, the petitions succeed. That part of rule-20 of the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 which enables the Appellate Tribunal to dismiss an appeal for default of appearance as well as proviso to Rule-20 is held to be ultra vires the provisions of section 35C(1) of the Central Excise & Salt Act, 1944 as well as Section 129B(1) of the Customs Act, 1962. It is declared that the Appellate Tribunal has no power to dismiss an appeal for non-appearance of the appellant and the appeal should be decided on merits. Consequently the orders i.e. the orders dismissing the appeals for default and rejecting the applications for restoration of appeals in each petition are hereby set aside and quashed. The Appellate Tribunal is directed to dispose of the appeal filed by the petitioners in each petition on merits and in accordance with law. Rule is made absolute in each petition, with no order as to costs.

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